Attachment A

ESEG proposal: Elements of the Proposed Effects Management Hierarchy (clause 3.6 of the NPS-REG)	ESEG Rationale	Discussion and questions
Areas with significant environmental values	N/a	The 2023 consultation document and ESEG proposal for 'areas with significant environmental values' excludes freshwater values. **In practice, would this constrain the effectiveness of a one-stop shop if freshwater values could not be considered under this?** The availability of the fast-track consenting process may also influence your views about this.
1. Allow REG activities in areas with significant environmental values where: (a) For new REG assets and activities there is an operational need or functional need for the REG assets and activities to be located in that area; or (b) For REG activities involving existing REG assets, the REG activity involves the continued operation, or the maintenance, upgrading or repowering of that asset; and (c) The effects management hierarchy is applied.	• Based on 3.6(1) of NPS REG 2023; note broad scope (at 'point of entry') i.e. covers all "*areas with significant value*" (as defined in NPS REG 2023, but with the definition amended as then proposed by ESEG[1]) and equally covers all relevant matters of national importance falling within s 6 of RMA, other than cultural heritage. As with the NPS-REG 2023, a bespoke approach to Māori interests is considered appropriate, acknowledging the special place of Māori under RMA, and reflecting established best practice of direct engagement. • The *functional and operational need test* would only apply to new assets/activities; it is not considered helpful/appropriate for existing REG (location is settled by previous investment/development, again as submitted by ESEG on the 2023 proposal). • Alongside functional and operational need, this clause otherwise applies the same "gateway" filters to qualify for access to the provision as under clause 3.11 NPSIB/3.22 of NPSFM (i.e. *significant national/regional benefits* would be inherent to REG under the operative policies, and applies to REG as a form of "*specified infrastructure*").	We acknowledge the point made that existing assets should not have to demonstrate compliance with the operational and functional need test, and we are considering this issue. We acknowledge the points made in submissions on the 2023 consultation document about changing 'areas with natural character in the coastal environment' and 'sites of significance to Māori and wahi tapu' and we are considering these.
2. The effects management hierarchy is as follows: (a) Subject to (b); (i) Adverse effects are mitigated where practicable. (ii) Where adverse effects are not mitigated, they are remedied where practicable. (iii) Where more than minor residual adverse effects are not mitigated or remedied, offsetting is provided where possible. (iv) Where more than minor residual adverse effects	• Commences with mitigation rather than "avoid" or "minimise", reflecting options available under s 5(2)(c) (avoid, remedy or mitigate); that said an 'avoidance' test is applied at the end of the sequence (see (b) below). • Functional/operational need test will also serve to filter out effects which can be 'avoided', by only allowing entry for *ipso facto* unavoidable effects (locationally; through REG dependency on renewable resource location/quality and connections to grid/market), i.e. effects which are able to be avoided where location is more flexible, will be so avoided through application of this test. • Residual effects test (under 3.6 NPS REG 2023) moved to be part of EMH itself -see (b) below. Comprises an 'avoidance' test, and proposed to be set at same effects threshold as (iii) (after mitigation/remediation) – i.e. "more than minor" rather than the "minor or transitory" threshold in *King Salmon,* or "significant" as under NPS REG 2023.	The EMH in the 2023 consultation document followed a sequence of 'avoid, minimise, remedy, offset, compensate'. That reflected the sequence in the Natural and Built Environment Act 2023, which has now been repealed. The more traditional effects management paradigm in the RMA is 'avoid, remedy, mitigate'. Recently, offset and compensate have also been adopted as approaches to manage effects (where that is appropriate and possible) – these are included in some other national policy statements, for instance the NPS-IB. The EMH proposed by the ESEG has a different sequence to that contained in the 2023 consultation draft: first mitigate, then remedy, then offsetting followed lastly by compensation. The 'avoid' clause is separated out and follows sequentially after 'remedy, mitigate, offset and compensate'. It also differentiates new activities from existing ones, in that existing activities should not be expected to avoid residual adverse effects. For specified matters of national importance (i.e. section 6 matters), a consideration of avoiding adverse effects is required in order to protect and preserve them. A national policy statement will need to say this in some manner in order to be consistent with the Act's purpose. The requirement to avoid adverse effects, and to protect and preserve various matters in certain cases by way of avoidance, remains present in the RMA and will 'bite' either at the plan change or consenting stage. For example, Clause 6 of Schedule 4 to the RMA requires alternatives to be considered for any proposal which has the potential for significant adverse environmental effects. Therefore, the requirement to 'avoid' certain effects must be present in any effects management hierarchy in some way. In the ESEG proposal, the 'avoid' clause only applies to a subset of 'areas with significant environmental values' (those set out in Schedule 1 in the proposed drafting) for new proposals i.e. it does not apply to existing activities. Existing activities and those not in the specific areas identified in Schedule 1 of the ESEG proposal do not have any specific reference to 'avoid', and would

[1] The one change made being that ONC only are covered in the definition as now advanced, HNC have been deleted in this drafting version to match the Schedule One resources discussed below.

are not offset, compensation is provided where appropriate.	• On the other hand, the threshold applies only to specific resources of greatest environmental value (as noted further below). • Acknowledges place of mitigation/remediation as techniques to avoid material harm (*Port Otago* at [66] to [68]).	be granted simply on the basis of the test "Where each step of the effects mitigation hierarchy under clause (2) has been applied; the REG activity must be allowed if the national significance and benefits of the activity outweigh the residual effects." Therefore, while meeting the 'avoid' test at the beginning of the EMH may be less practical for large-scale or existing activities, it may not be consistent with the purpose of the RMA to entirely remove it. **What could be done to address this situation?**
(b) For new REG activities, any more than minor residual adverse effect on the resource values identified in Schedule One must be avoided.	• Places 'avoidance' at end of hierarchy where adds greater 'value', ie as bottom-line threshold for areas of <u>most</u> environmental value. • This test is necessarily confined to new activities (as under ESEG drafting input to NPS REG 2023, clause 3.6)- existing activities will inevitably have impacts on the environment, including resources of significant value, that would fail this threshold (particularly when assessed against the zero-baseline approach which has emerged under RMA case law). As discussed at the meeting, reconsenting existing generation capacity is as important to meeting the nationally prescribed emission reduction targets, as for all the new generation required. • The avoidance test is sheeted to specific resources and values; rather than generic "significant adverse effects" threshold in NPS-REG 2023 (which would be highly contestable, and essentially just add an additional test to RMA for all areas of significant value (Option 2A) or SNAs (Option 2B)). • Conversely, the test is more stringent otherwise ("more than minor", c/f "significant") and matching the test in item (iii) after mitigation/remediation (as noted above).	If the NPS were to form a 'one-stop shop' for effects management hierarchies in areas with significant environmental values, and there was a strong presumption in favour of development (where the conditions relating to the effects management hierarchy are met), we agree that there would be a need to integrate some protections within other NPSs by including specific bottom-line thresholds. This is further discussed in the row below on Schedule One.
2. Where each step of the effects mitigation hierarchy under clause (2) has been applied; the REG activity must be allowed if the national significance and benefits of the activity outweigh the residual effects.	• Drafted in this way, the clause provides consenting certainty ("must be allowed" reflecting Electrify NZ, "*near automatic provided national rules are met*"). • Does not duplicate or compound existing RMA tests under eg s 104 of RMA; provides 'one stop shop' approval for REG specifically. Conversely where clause 3 is not met; assessment *would* default back to s 104.	To summarise, your view is that there is a balance to be struck between: • More consenting certainty and more certainty about the maximum level of adverse effects that would be allowable (e.g. no more than minor residual adverse effects) • Less consenting certainty (i.e. more discretion for decision-makers about whether to grant or decline a consent) and less certainty about the level of adverse effects that is allowable i.e. a more enabling test for residual adverse effects. This is more similar to the effects management hierarchy in the 2023 consultation document (under which, in certain circumstances, significant residual adverse effects could have been allowed). You prefer the first option. **Is it worthwhile continuing to explore the second?** **Does the use of 'national significance' in the balancing test restrict approval to large-scale activities or significant network infrastructure?** I.e. smaller activities which may be regionally significant, or upgrades that are less significant, could struggle to achieve that test. If so, is that appropriate? (it would likely not meet the policy objectives of the Government.)
3. Clause 3 applies despite any contrary provision of any other national direction, regional policy statement, or plan. 4. For the avoidance of doubt, any effects management hierarchy under any other national direction, regional policy statement or plan must not be applied to an REG activity.	• Rather than displacing NPSFM/NZCPS altogether; or "deeming" that this national direction is met as a whole (as under previous ESEG proposal in 2023), instead: – Authorises (requires) approval only where the EMH is applied to qualifying activities (REG with functional operational need, minor residual effects after offsetting/compensation). – Displaces (under clause 5) tests already available under NPSIB/NPSFM for eg <u>all</u> SNAs/natural inland wetlands/loss of rivers (3.11 NPSIB, 3.22/3.24 NPSFM); *and regardless of level of residual impact*. Arguably, this bespoke EMH for	Because these provisions will 'act' on other national policy statements, it is not possible to put in place a clause like this through the NPS-REG or NPS-ET. Instead, either legislative provisions or specific changes to other national policy statements where provisions are to be disallowed (and subsequently reflected in the NPS-REG) would be necessary. Regardless, the proposed drafting likely does not provide enough specificity about what provisions in other national direction are to become part of the one-stop shop in the NPS-REG. **How would 'any effects management hierarchy under any other national direction, regional policy statement or plan' be defined with more specificity?** For instance, should it include provisions within the NZCPS? Which ones? **Is it possible that this approach will result in conflicts with policies within other NPSs that continue to operate (i.e. policies in other NPSs that don't relate specifically to effects management)?**

	REG is more stringent than those other EMH 'exceptions', given the threshold test proposed above, but the provision is then more directive as to what results i.e. "must be allowed". Again, this serves the certainty objective. • Beyond that, the wording has "bottom lines" per Schedule One for resources of greatest environmental value.	
Schedule One 1. Any taxa, habitat, ecosystem or area covered by Policy 11(a) of the New Zealand Coastal Policy Statement 2010, and located in the coastal environment. 2. Any area of outstanding natural character in the coastal environment.	• 1. Essentially preserves Policy 11(a) of NZCPS (given no more than minor residual impact allowed under 2 (b) above). • Biodiversity values outside the coastal environment (beyond ambit of NZCPS) will be addressed through the NPSIB review (coalition agreement with New Zealand First), as might ultimately inform content of this schedule • 2. also essentially preserves Policy 13(1)(c) of NZCPS for ONCs; ONLs by contrast are extensive and arguably of less environmental value than ONC (which have high abiotic/biotic value weighting), and warrant less absolute protection than areas of biodiversity value under s 6 of RMA (see *Port Otago* at [28]).	We are keen to discuss in more detail your rationale for including these areas, and the possible impacts. **For instance, with regard to indigenous biodiversity, what would the impact be of including significant natural areas in such a list?** There have been concerns about the lack of certainty that remains for indigenous biodiversity because of the 'carve-out' that was included in the National Policy Statement on Indigenous Biodiversity (NPS-IB).